

COMMITTEE ON LEGAL SERVICES

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 Rep. Jeanne Labuda
 Rep. Claire Levy
 Rep. Ellen Roberts
 Sen. Greg Brophy
 Sen. Shawn Mitchell
 Sen. Brandon Shaffer
 Sen. Abel Tapia

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SUMMARY OF MEETING**COMMITTEE ON LEGAL SERVICES**

April 15, 2008

The Committee on Legal Services met on Tuesday, April 15, 2008, at 8:38 a.m. in HCR 0112. The following members were present:

Representative McGihon, Chair
 Representative B. Gardner (present at 8:41 a.m.)
 Representative Labuda
 Representative Levy
 Senator Brophy
 Senator Tapia
 Senator Veiga, Vice-chair

Representative McGihon called the meeting to order. She said the item before the Committee today is Senate Bill 08-075.

Debbie Haskins, Senior Attorney, Office of Legislative Legal Services, testified before the Committee. She said before the committee is Senate Bill 75, which is the annual rule review bill. The Committee is sitting as the House committee of reference on the bill. It has already been through the Senate. It deals with the rules that were adopted during the 2007 cycle, so those rules that were adopted or amended on or after November 1, 2006, and before November 1, 2007. The rules are set through the "State Administrative Procedure Act" (APA) to automatically expire on May 15, 2008, unless they're extended by this bill.

Representative McGihon said she sent someone to Mr. Brackney yesterday on a question. I believe at our December meeting, we dealt with some Colorado department of education rules, and they have done some corrections or legislation passed, that make the rules comply. I am wondering if we need to take any action on those particular rules?

Chuck Brackney, Senior Attorney for Rule Review, Office of Legislative Legal Services, testified before the Committee. He said the rules could be the ones having to do with the summer school grant program and 4th graders. A legislative fix for that is in the school finance bill, which hasn't gotten all that far through the process.

Senator Veiga said do we typically then, as the rule review bill makes its way through the House, sort of hold it until close to the end and if the school finance bill passes with that fix, we'll then pull it out of the rule review bill? Ms. Haskins said yes, you could do that. I would recommend that you at least get the bill out of the Committee and then you could hold it on the floor in the House. We really need to get the bill out of this Committee.

Representative McGihon said those rules are of some concern in terms of whether we take them out. I think the House committee of reference can take action today. We'll hold the bill on the floor to see what happens to the school finance bill, amend it, and then the Senate will have to concur. Is that acceptable to the Committee? The Committee did not object.

Ms. Haskins said one other point about the bill. The bill postpones the automatic expiration of the rules for each state agency with the exception of the ones that are specifically listed in the bill and those are the ones the Committee has found either there was a statutory conflict or the agency exceeded or lacked statutory authority for the rules. We did prepare a summary for you that explains each one of the issues.

Representative Labuda said I appreciate the outline you gave us. Most of these are because when the statute was passed it turns out the rule-making had exceeded its authority. Is that correct? Ms. Haskins said yes, there's three different grounds that are based in statute in the APA. One is that the rule conflicts with the statute. If we match them up, they don't actually match up. Another is that the agency has statutory authority, but they went too far in what they adopted. The third is we would be arguing that they have no statutory authority at all to adopt the rules that they did. In the summary, we try to outline what those particular issues are.

Representative McGihon said those have been the discussions and the presentations we've had over the last several committee meetings, where we've had those discussions on those three different grounds.

8:44 a.m.

Hearing no further discussion, Senator Veiga moved Senate Bill 08-075 to the committee of the whole with a favorable recommendation. Senator Brophy seconded the motion. The motion passed on a 7-0 vote, with Representative Gardner, Representative Labuda, Representative Levy, Representative McGihon, Senator Brophy, Senator Tapia, and Senator Veiga voting yes.

8:44 a.m.

The Committee adjourned.